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In the Supreme Court of the United States

October Term, 1933

No. 920

STATE OF TEXAS ET AL., APPELLANTS

v.

THE UNITED STATES OF AMERICA, THE INTERSTATE COMMERCE COMMISSION, et al.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

OPINION BELOW

The opinion of the specially constituted District Court (R. 52) is reported in 6 F. Supp. 63. The original report of the Commission, Division 4 (R. 9), is reported in 189 I.C.C. 253, and its supplemental report (R. 20) in 193 I.C.C. 521.

JURISDICTION

The decree of the District Court was entered February 12, 1934 (R. 44). Petition for appeal was filed March 15, 1934, and was allowed on the same day. (R. 45–49.)

Jurisdiction of this Court rests on the Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 208, 220 (U.S.C., Title 28, Sec. 47), as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, 938 (U.S.C., Title 28, Sec. 345).

QUESTION PRESENTED

Whether, under Sec. 5, paragraphs (2), (3), (4) and (15), of the Interstate Commerce Act, as amended, the Interstate Commerce Commission may issue an order authorizing a carrier to acquire control of the properties of another carrier, by virtue of a lease the provisions of which permit the lessee to abandon or to remove from a State the general offices and shops of the lessor, contrary to the laws of such State.

STATUTES INVOLVED

The Federal statutes here involved are as follows: Section 5, Pars. (2), (3), (4) and (15) of the Interstate Commerce Act as amended by the Emergency Railroad Transportation Act, 1933 (c. 91, secs. 201 and 202, 48 Stat. 211, 217, U.S.C. Sup. VII, Tit. 49, sec. 5 (2), (3), (4) and (15)). The State statutes involved are Articles 6260, 6275 and 6278 of the 1925 Revised Civil Statutes of Texas. The pertinent portions of these statutes are printed in full in the Appendix, pp. 43–47, *infra*.

Briefly, the Interstate Commerce Act, as amended, directs the Commission to "prepare and adopt a plan for the consolidation of the railway properties of the continental United States into a limited number of systems." Sec. 5 (2), and Sec. 5 (3). (The plan was

prepared, hearings were held, it was finally adopted, and both of the railway companies involved herein were assigned to the same "system." *Consolidation of Railroads*, 159 I.C.C. 522, 540–541.) The statute further provides, among other things, that "it shall be lawful, with the approval and authorization of the Commission, * * * for any carrier * * * to * * * lease * * * the properties, or any part thereof, of another * * *." If after hearing "the Commission finds that, subject to such terms * * * as it shall find to be just and reasonable, the proposed * * * lease * * * will be in harmony with and in furtherance of the plan for the consolidation of railway properties * * * and will promote the public interest, it may enter an order approving and authorizing such * * * lease * * *" Sec. 5 (4). It also provides that "the carriers * * * affected by any order made under * * * this section shall be * * * relieved from the operation of the antitrust laws * * * and of all other restraints or prohibitions by or imposed under authority of law, State or Federal, insofar as may be necessary to enable them to do anything authorized or required by such order." Sec. 5 (15).

The laws of Texas permit only Texas corporations to "own or maintain any railways within the State," (1925 Revised Civil Statutes of Texas, Art. 6260), and every railroad company chartered by "or operating any line of railway" within the State must "keep and maintain permanently its general offices" within the State, Art. 6275. Furthermore, at the place at

which the general offices were kept within the State, the office "of * * * president, or vice-president, secretary, treasurer, local treasurer, auditor, general freight agent, traffic manager, general manager, general superintendent, general passenger and ticket agent, chief engineer, superintendent of motive power and machinery, master mechanic, master of transportation, fuel agent, general claim agent" are to be kept and maintained, and the persons holding these general offices are required to "reside at the place and keep and maintain their offices at the place where said general offices are required by law to be kept and maintained." No other offices "usually known as general offices" are to be kept "at any other place than the one at which it is required to keep its general offices." Art. 6278.

STATEMENT

This is a suit under the Act of October 22, 1913, as amended, to enjoin an order of the Interstate Commerce Commission, dated October 4, 1933, authorizing the Kansas City Southern Railway Company (hereinafter called the Southern Company) to acquire control, by lease, of the railroad and certain properties of the Texarkana & Fort Smith Railway Company (hereinafter called the Texarkana Company), incorporated under the laws of Texas. A joint petition to set aside the order was filed by the State of Texas, the Railroad Commission of Texas, the City of Palestine, and the County of Bowie, Texas, complaining of the United States of America, the Interstate

Commerce Commission, and the Southern and Texarkana Companies, defendants.

Proceedings before the Commission: The Commission heard this matter twice. On February 13, 1932, by virtue of paragraph (2) of Section 5 of the Interstate Commerce Act (i.e., as the Act stood before the amendment of 1933, 41 Stat. 480), the Southern Company filed application with the Commission for an order authorizing it to acquire control, under lease, of the properties of the Texarkana Company, in Texas and elsewhere, not already leased to it.[1] (R. 9.) Protests against the granting of the application were submitted on behalf of all the appellants herein, and on behalf of the Texarkana Chamber of Commerce. (R. 9.)

The Commission conducted a hearing at Texarkana on May 2, 1932, where, in support of the application, pertinent testimony was presented and exhibits were filed. Neither the State of Texas nor the other interests opposing the application introduced any testimony, although they did cross-examine applicant's witnesses (R. 12).

It appears from the report (R. 9, 10) of the Commission that the Kansas City Southern Railway System comprises the Southern Company, the Texarkana Company, and the Kansas City, Shreveport and Gulf Railroad. The controlling company

[1] Those portions of the line of the Texarkana Company which are outside the State of Texas were already under lease to the Southern Company by virtue of the Commission's authority issued in *Lease of Line by Kansas City Southern Ry.*, 105 I.C.C. 523 (R. 21).

(through stock ownership) in this system is the Southern Company. The system extends, for a course of 883.2 miles, from Kansas City, Mo., in a southerly direction to the Gulf of Mexico. From Kansas City to the Gulf there is a continuous boundary line separating the States of Kansas, Oklahoma, and Texas on the west and Missouri, Arkansas, and Louisiana on the east. The main line of this railway system crosses and recrosses this continuous boundary line. In passing through Arkansas, the main line is within the northeast corner of Texas for a distance of 31 miles. Leaving the State of Texas just south of Texarkana on the Texas-Arkansas line, it proceeds thence (passing through Shreveport, La.) through practically the entire length of the State of Louisiana. Near the Gulf it crosses into Texas again and extends for fifty miles in the southeastern corner of Texas to Port Arthur, Texas, on the Gulf. The parts of th system thus described as within Texas are the subject of the lease, with which this suit is concerned.

The Texarkana Company owns the aforesaid 81 miles of this system; it owns certain mileage outside the State of Texas, but this is operated under lease by the Southern Company. The Kansas City, Shreveport & Gulf Ry. Company owns 228 miles of main line of the system in the State of Louisiana, all of which is operated by the Southern Company. Thus, the Southern Company operated a total of 802.2 miles, or all of the system except the 81 miles in the State of Texas (operated by the Texarkana Company).

It is apparent from the above that the two segments of the Texarkana Company above described, i.e., one of 31 miles and the other of 50 miles, do not constitute a railway system in themselves, but comprise merely those relatively small portions of the main line of the Kansas City Southern Railway System which are within the territory of Texas.

The general offices of the Texarkana Company are located at Texarkana, Texas, where the main line of the system cuts across the northeast corner of Texas. There are also general offices and shops, belonging to the system, at Shreveport, Louisiana, on the main line only one hundred miles from Texarkana.

For the convenience of the court a draftsman's map of the territory traversed by the Kansas City Southern System has been inserted herein. Those portions of the main line of the system which are within the territory of Texas are indicated by solid lines.[2]

The sole objection (R. 22) made to the proposed lease related to the second paragraph of its Section 5, the material portions of which read:

> The Southern Company does not assume any obligation to maintain, during the term of this lease, any general offices, machine shops,

[2] This map is based upon the Rand-McNally Standard State Maps and is inserted here for illustrative purposes only. The distance designations are taken from the Record. (R. 9–10.) The State boundary lines and railroad locations are taken from the maps and of these it is submitted that the Court will take judicial notice.

THE KANSAS CITY SOUTHERN RY SYSTEM
883.2 MILES
KANSAS CITY
KANSAS
MISSOURI
OKLAHOMA
ARKANSAS
MENA
TEXARKANA
SHREVEPORT
TEXAS
LOUISIANA
PORT ARTHUR

> or round houses for or belonging to the Texarkana Company at any particular place or places, regardless of present or previous locations thereof; but shall have the right to change any existing location of general offices, machine shops, round houses and terminal facilities, belonging to the Texarkana Company, and to re-organize the same, and, from time to time, to change the same, during the full term of this lease; * * * and the Southern Company shall not be obligated or bound to perform any contractual, statutory or other obligation with reference to such matters which may now or hereafter rest upon the Texarkana Company; * * *

Certain laws of Texas, which are set out in full in the Appendix, prohibit any railroad, except a Texas corporation, from operating within the State (Article 6260), and require all railroad corporations operating within the State to maintain their general offices and general officers therein (Articles 6275 and 6278). Drastic penalties are imposed by the Texas laws for a violation of these provisions. In accordance with these laws, the Texarkana Company has at all times maintained its general offices and general officers at Texarkana in the State of Texas. (R. 3, 22.)

The Commission found [3] the following: That under normal operating conditions the proposed lease of the

[3] While the findings of the Commission do not appear in any separately designated form (such as the "Findings of Fact" made by the Federal Trade Commission, for example) they are sufficiently framed so as to avoid such deficiencies as were condemned in *The Beaumont, Sour Lake & Western Railway* v. *United States*, 282 U.S. 74; and *Florida, et al.* v. *United States*, 282 U.S. 194, 214, 215.

Texas lines of the Texarkana Company would result in an annual saving of $81,626.08. (R. 11.) That this saving would result from the unification of operations, the discontinuance of the general offices of the Texarkana Company of Texarkana, and the removal to Shreveport and Kansas City of many of the activities at Texarkana which caused duplication of work. That Shreveport is considered more centrally located from an operating standpoint than Texarkana that and there are at the former point the Southern Company's main terminal for the Southern territory, shops for heavy repairs, more industry, greater population, and more railroad connections. (R. 11.)

The protestants, on brief and argument, conceded that there is little or no controversy concerning the facts; moreover, they did not challenge the power of the Commission to authorize the acquisition of control sought by the Southern Company. Their objection was directed solely to the approval of that portion of the proposed lease, quoted above, permitting the discontinuance of the general offices within the State of Texas. (R. 12.) They contended that the Commission had no jurisdiction to issue an order permitting the removal of general offices of a Texas corporation from the State of Texas in contravention of the statutes of that State. (R. 12–13.) At the first hearing, the Commission sustained the contention of the protestants. (R. 16.)

Second hearing before the Commission: Following the enactment of the Emergency Railroad Transportation Act, approved June 16, 1933, the proceeding before the Commission was reopened, a supplement

to the application was filed by the Southern Company, due notice was given the Governor of the State of Texas, the testimony previously taken was re-introduced, additional testimony was taken, and the matter was again submitted to the Commission upon the record so made and under the provisions of the new Act. (R. 21.) As in the initial hearing, the protestants introduced no testimony, but simply contended that, as a matter of law, neither Congress nor the Commission has power to authorize the Southern Company to remove the offices of the Texarkana Company beyond the boundaries of the State of Texas, in contravention of the laws of that State. (R. 24.)

On October 4, 1933, the Commission concluded that it did have jurisdiction and that the acquisition would promote the public interest. It reiterated all of the findings of fact made at the first hearing (R. 23–24), and added the following:

> * * * In view of the volume of interstate traffic handled by the T. & F. S. (the Texarkana Company) and the net income earned by that carrier, it is clear that the expenditure of approximately $81,000 a year, which will be unnecessary under the plan that the applicant proposed to put into effect under the lease, constitutes an undue burden on interstate commerce. (R. 25; 193 I.C.C. 525.)

In addition, the Commission reached the conclusion that the proposed lease would be "in harmony with and in furtherance of the plan for the consolidation of railroad properties heretofore established by us

and will promote the public interest." (R. 25; 193 I.C.C. 521, 525.) Accordingly, it reversed its prior holding that the second paragraph of Section 5 of the lease should be eliminated. It is this part of the order which the appellants sought to enjoin in the court below.

Proceedings in the court below: By petition filed (R. 1–8) on November 29, 1933, plaintiffs challenged the order of the Commission on the sole ground that the Commission lacked jurisdiction [4] to authorize the removal of the general offices and shops at Texarkana from the State of Texas, because of the resulting contravention of the State laws. (R. 5–6.). The petition raised no question as to the facts nor was there any contention that the action of the Commission was unsupported or contrary to the evidence. Neither did the petition question the finding of the Commission that the requirement for maintenance of separate offices at Texarkana, pursuant to State law, imposes an undue burden upon interstate commerce. The United States (R. 39–41) and the Interstate Commerce Commission (R. 29–32) filed separate answers, and, in addition thereto, the defendant railway companies answered jointly (R. 33–39), denying the allegation that the order was in excess of the Commission's authority, and further, by way of cross-action, pray-

[4] It will have been noted above that, before the Commission, both the power of Congress and that of the Commission to authorize the abandonment or removal of the general offices were challenged. The bill filed in the court below, however, did not question the power of Congress to deal with the subject.

ing that enforcement of penalties by the State of Texas applicable to disobedience of the incorporation statutes of that State be enjoined both during the pendency of the suit and permanently.

The three-judge tribunal to which the cause was presented rendered its opinion (R. 52–60), and entered its order [5] (R. 44–45), on February 6, 1934, dismissing the bill of complaint. It had already enjoined the enforcement of the penalty statutes during the pendency of the suit, but not permanently. (R. 44.)

The opinion of the court below, after reciting that "no question of fact is in dispute" (R. 53) and that the complainants had admitted that the findings of the Commission were fully supported by the evidence (R. 53), addressed itself wholly to the inquiry whether Congress has, by virtue of the Interstate Commerce Act, as amended by the Transportation Act of 1920 and by the Emergency Railroad Transportation Act, 1933, conferred authority on the Commission to approve such a lease notwithstanding such State statutes as are involved herein. The court declared that such authority existed, not merely from the specific language of Section 5, paragraph (15) of the statute, but from the general purpose and scope of the new legislation relative to unification and improvement of management of the national system of railroad transportation. In this respect, the court observed (R. 59–60):

> If Texas can require every railroad company operating within its boundaries to incorporate

[5] By stipulation of counsel, the cause was presented for final hearing. (R. 53.)

in Texas and to maintain general offices and yards in Texas the other states which this system traverses may do likewise. Missouri and Arkansas and Oklahoma and Louisiana may compel it to incorporate in and to maintain general offices and yards in their respective states. A more intolerable burden on interstate commerce among the states can hardly be imagined.

SUMMARY OF ARGUMENT

The sole question before the Court is whether Congress, by virtue of the Interstate Commerce Act, as amended by the Transportation Act of 1920 and the Emergency Railroad Transportation Act, 1933, has delegated to the Commission authority to approve that portion of the proposed lease which permits the abandonment or removal from the State of Texas of the general offices and shops of the Texarkana Company.

I

The Policy of Congress.—The primary purpose of Congress in the enactment of the statutes in question was to provide for the maintenance and efficiency of an adequate and unified system of national transportation. *New England Divisions Case*, 261 U.S. 184, 189; *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy Railroad Co.*, 257 U.S. 563, 585; *Texas & Pacific R.R. Co.* v. *Gulf, etc., Ry. Co.*, 270 U.S. 266; *Dayton-Goose Creek Ry. Co.* v. *United States*, 263 U.S. 456; *Florida et al.* v. *United States et al.* No. 342, October Term, 1933. The elimination

of waste and unnecessary expenditure was clearly contemplated. *Davis* v. *Farmers' Cooperative Co.*, 262 U.S. 312; *Colorado* v. *United States*, 271 U.S. 153, 163; *Davis* v. *Portland Seed Co.*, 264 U.S. 403. Duplication of railroad shops, the very issue involved in this case, was plainly regarded by Congress as typical of the character of unnecessary expenditure intended to be condemned by such legislation. 77 *Congressional Record*, pp. 4270, 4854, 4874, and 4875.

II

The Uncontradicted Findings.—The amendments to the Interstate Commerce Act confer upon the Commission the duty to promulgate and place into operation a plan for a national system of transportation; and empower the Commission to approve any proposed acquisition by one carrier of control over the properties of another, by lease, whenever the Commission, after hearing, shall find that such acquisition of control, including the terms and conditions thereof, will be in harmony with and in furtherance of its plan for a national system of transportation and will promote the public interest. It is undisputed in this instance that the Commission, after full hearing, has found that the lease proposed by the Southern Company, and all of the terms and conditions thereof, is in furtherance of the national plan of the Commission, and will promote the public interest. Appellants do not question these findings. Nor have they brought into the record the evidence upon which the conclusions were reached. Under

such circumstances, the findings of the Commission, including the finding that the maintenance of the general offices within the State of Texas will involve an unnecessary expenditure of $81,000 a year and will constitute an undue burden on interstate commerce, are conclusive. *Louisiana & Pine Bluff Ry. Co. v. United States*, 257 U.S. 114, 116; *Chicago, I. & L. Ry. Co. v. United States*, 270 U.S. 287, 295; *United States v. Tennessee*, 202 U.S. 318, 323 324; *Spiller v. Atchison T. & S. F. Ry. Co.*, 253 U.S. 117, 125.

III.

The General and Specific Authority Conferred upon the Commission. Finally, both by general operation and specific provision of the Interstate Commerce Act, as amended, the order of the Commission is valid, notwithstanding the laws of the State of Texas invoked herein. It is well established that the Commission, in the exercise of the authority granted to it by general provisions of the Act, is not precluded from performing its functions because of the fact that its order would contravene either the provisions of a State statute or the terms of a private contract. *Cleveland, etc., Ry. Co. v. United States*, 275 U.S. 404; 442; *Claiborne-Annapolis Ferry Co., v. United States*, 285 U.S. 382, 391; *New York Central Securities Corporation v. United States*, 287 U.S. 12, 36 37; *Colorado v. United States*, 271 U.S. 153, 162 et seq.; *Transit Commission v. United States*, 284 U.S. 360, 368; *Transit Commission v. United States*, 289 U.S. 121, 127 128; *Los Angeles Switching Case*, 234 U.S. 294, 312; *Louisville & Nashville R.R. Co. v. Mottley*, 219

U.S. 467. To interpret the language of the Interstate Commerce Act, even in the absence of any specific provision, as not authorizing the issuance of this particular order, because of its conflict with the State laws, would result in an unreasonable delimitation and diminution of the great purposes of that statute. In any event, it is clear that the Act specifically provides that the Commission's order shall be operative, notwithstanding the State laws (Sec. 5 (15)). In addition to the unambiguous language of this specific provision, and examination of the history of the legislation compels that interpretation.

ARGUMENT

Appellants do not contend that Congress does not have the power to authorize the Commission to issue such an order as is under attack herein.[5] The sole question, therefore, is whether Congress has actually delegated such authority to the Commission. Reduced to this narrow consideration, the inquiry becomes one concerned wholly with an examination and interpretation of the Interstate Commerce Act, as amended by the Transportation Act of 1920 and by the Emergency Railroad Transportation Act, 1933.

[5] Leading cases showing why such a contention would be unsound are: *State of New York et al. v. United States*, 257 U.S. 591, 601; *Minnesota Rate Case*, 230 U.S. 352, 398, 400; *Houston & Texas Ry. Co.* v. *United States*, 234 U.S. 342; *Colorado* v. *United States*, 271 U.S. 153; *Louisville & Nashville Ry. Co.* v. *Mottley*, 219 U.S. 467; *Scranton* v. *Wheeler*, 179 U.S. 141, 162, 163; and *Union Bridge Co.* v. *United States*, 204 U.S. 364, 400.

I

THE EFFECT OF THE ENACTMENT OF THE TRANSPORTATION ACT OF 1920 AND THE EMERGENCY RAILROAD TRANSPORTATION ACT OF 1933 IS TO CONDEMN, AS A BURDEN ON INTERSTATE COMMERCE, ANY UNNECESSARY EXPENSE OR WASTE WHICH HINDERS THE MAINTENANCE AND EFFICIENCY OF A UNIFIED SYSTEM OF NATIONAL TRANSPORTATION

The framers of such laws as those of the State of Texas which are invoked herein had in mind the regulation of such railroads as were operating in particular portions of the country, and their efforts in this respect were directed toward coping with local problems without regard to the needs and welfare of the country as a whole. With the tremendously increased burden upon the transportation facilities of the country in recent years, a new perspective of transportation requirements was developed. State statutes relating to commerce were seen to impede rather than to assist in the realization of an efficient and effective national system of transportation. As this Court has observed in the case of *Transit Commission* v. *United States*, 289 U.S. 121, at p. 127:

> Prior to the Transportation Act, 1920, regulations coincidentally made by federal and state authorities were frequently conflicting, and often the enforcement of state measures interfered with, *burdened*, and destroyed interstate commerce. Multiple control in respect of matters affecting such transportation has been found detrimental to the public interest as well as to the carriers. Dominant federal action was imperatively called for. (Italics ours.)

With the enactment of the Transportation Act of 1920, a "new railroad policy" was introduced in Federal legislation. In the *New England Divisions Case*, 261 U.S. 184, at p. 189, it was specifically said:

> Transportation Act, 1920, introduced into the federal legislation a new railroad policy. *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy R.R. Co.*, 257 U.S. 563, 585. Theretofore, the effort of Congress had been directed mainly to the prevention of abuses; particularly, those arising from excessive or discriminatory rates. The 1920 Act sought to ensure, also, adequate transportation service.

See also *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy Railroad Co.*, 257 U.S. 563, 585; *Dayton-Goose Creek Railway Co.* v. *United States*, 263 U.S. 456; *Davis* v. *Farmers Cooperative Co.*, 262 U.S. 312; and *Texas & Pacific Railway Co.* v. *Gulf, Colorado, etc., Railway Co.*, 270 U.S. 266, 277.

Moreover, in the projecting of a plan for uniformity and coordination of transportation, it was equally obvious that a primary necessity was that of insuring to the rail carriers, as a matter of benefit to the public, that economies in operation and management would be effected. The conservation of carriers' revenues was a major objective. *Davis* v. *Portland Seed Co.*, 264 U.S. 403. The Act

> recognized that preservation of the earning capacity and conservation of the financial resources of individual carriers is a matter of national concern.

Texas & Pacific R. R. Co. v. Gulf, etc., Ry. Co., *supra*, p. 277. As was said in *Davis v. Farmers Cooperative Company*, *supra*, p. 317:

> Avoidance of waste, in interstate transportation, as well as maintenance of service, has become a direct concern to the public.

The provisions of the Transportation Act of 1920 clearly warrant the views expressed above. Of particular interest in this inquiry are those statements contained in Section 5, paragraphs 2 to 9, inclusive, under the specific authority of which the order here in question was issued. By virtue of these provisions, the Interstate Commerce Commission was authorized to permit carriers to acquire control of the properties of other carriers, either by lease or by purchase of stock or both (par. 2); to prepare and adopt a plan for the consolidation of the railway properties of the nation into a limited number of systems, commensurate with the need for uniformity in rate structures and efficiency in management (par. 4); and, provided such transactions be in harmony with the national plan, to consolidate properties of two or more railroad companies for ownership, management, and operation (par. 6). That the purposes of the Act might not be obstructed, it was provided further that carriers proceeding under the authority of appropriate orders of the Commission should be relieved from the operation of the Federal antitrust laws, and of "all other restraints or prohibitions by law, State or Federal, in so far as may be necessary to enable them to do anything authorized

or required by any order made under and pursuant to the foregoing provisions of this section" (par. 8).

This Court understands the conditions that led to the adoption by Congress of the Emergency Railroad Transportation Act, 1933. As incidental to the purpose expressed in its expressed purpose, "to * * * foster and protect interstate commerce in relation to railroad transportation by preventing and relieving obstructions and burdens thereon resulting from the present acute economic emergency," it states a further purpose "to avoid unnecessary duplication of services and facilities of whatsoever nature * * * undue impairment of net earnings * * * and * * * other wastes and preventable expense." (c. 91, title I, 48 Stat. 211, 212). It re-enacts the provisions of Section 5 of the Transportation Act of 1920 in virtually identical language, except that, in the new law, all consolidations, mergers, purchases, leases, operating contracts, or acquisitions of control must be found by the Commission to be "in harmony with and in furtherance of" the plan for the consolidation of railway properties (Sec. 202). Commenting on the changes wrought by the 1933 Act in Congressional policy, this Court very recently declared (*Florida et al.* v. *United States et al.*, No. 342, October Term, 1933):

> Thus the Commission is to consider, among other factors, "the effect of rates on the movement of traffic"; "the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of service"; and "the need of revenues sufficient to enable the

> carriers, under honest, economical, and efficient management, to provide such service.'"

It is thus apparent that Congress has acted to condemn, as a burden on interstate commerce, any unnecessary expense or waste that hinders the maintenance and efficiency of a national system of railroad transportation. Especially is this true where the expenditure, resulting in impairment of net earnings and unnecessary duplication of services, like that in the present instance, is in furtherance of local rather than national interest. In *Colorado* v. *United States*, 271 U.S. 153, at p. 163, arising under the Transportation Act of 1920, this Court has said that:

> Prejudice to interstate commerce may be effected in many ways. One way is by excessive expenditures from the common fund in the local interest, thereby lessening the ability of the carrier properly to serve interstate commerce.

Finally, it is evident from an examination of the record of the debates in Congress preceding the enactment of the 1933 Act that Congress intended, by that statute, the elimination of the very type of unnecessary expenditure as appears in this case; the consolidation of shops and round houses was clearly contemplated. See 77 Congressional Record, pp. 4270, 4854, 4874, and 4875.

II

THE FINDING BY THE COMMISSION THAT THE MAINTENANCE OF GENERAL OFFICES AND SHOPS AT TEXARKANA, WHICH WILL BE UNNECESSARY UNDER THE PROPOSED LEASE, IS A WASTE AND INVOLVES UNNECESSARY EXPENSE, SUCH AS TO CONSTITUTE AN UNDUE BURDEN ON INTERSTATE COMMERCE, IS CONCLUSIVE

It is clear from examination of the recent amendments to the Interstate Commerce Act, that Congress has conferred upon the Commission the function of ascertaining whether a proposed consolidation or acquisition of control by lease will be in furtherance of and in harmony with the plan of the Commission for a national system of transportation and will promote the "public interest." Section 5, Paragraph 4(b) of the Act provides that whenever an application is made to the Commission by a carrier proposing a consolidation, merger, lease, operating contract, or acquisition of control, the Commission shall set down the matter for public hearing and

> If after such hearing the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed consolidation, merger, purchase, lease, operating contract, or acquisition of control will be in harmony with and in furtherance of the plan for the consolidation of railway properties established pursuant to paragraph (3), and will promote the public interest, it may enter an order approving . . . . such consolidation, merger, purchase, lease, operating contract, or acquisition of control, upon the terms and conditions

> and with the modifications so found to be just and reasonable.

In passing, it may be pointed out that the phrase employed, "promote the public interest", is a sufficiently defined standard. The Court, in *New York Central Securities Corporation* v. *United States*, 287 U.S. 12, 25, declared:

> the term "public interest" as thus used is not a concept without ascertainable criteria, but has direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provision and best use of transportation facilities, questions to which the Interstate Commerce Commission has constantly addressed itself in the exercise of the authority conferred.

Turning now to the application of these provisions of the Act to the present situation, it is equally clear that the Commission, in accordance with the mandate of the statute, has found that the plan contemplated by the lease proposed by the Southern Company will be in furtherance of and in harmony with the general plan of the Commission for a national system of transportation; that it will promote the public interest; and that the elimination from the lease of the section permitting an abandonment of the general offices and shops at Texarkana would result in the countenancing of a waste and unnecessary expenditure, contrary to the effectiveness of such a plan and of the whole purpose of the statute.

In the first place, the Commission had previously laid the background for applications similar to that

proposed herein, in its formulation, on August 3, 1921, of a tentative plan for the consolidation of the railway properties of the continental United States, as required by Section 5 (4) and (5) of the Interstate Commerce Act, as amended by the Transportation Act of 1920. During the ensuing eight years, extensive hearings were held from time to time relative to the plan proposed, and on December 9, 1929, the Commission announced its adoption of the plan. *Consolidation of Railroads*, 159 I.C.C. 522. Both of the railroad companies involved in this cause were assigned to the same "system" (System No. 15—Union Pacific; see pp. 540–541 of the report), and the possibility that some of the properties of the railroads would be taken over by other carriers was anticipated.[7]

As to that portion of the proposed lease which permits the abandonment of the general offices and shops at Texarkana, evidence was introduced by the Southern Company relative to the annual saving

[7] The Commission's report, 159 I.C.C. 522, 523, reads: "Wherever in this report a railway property is named, unless an exception is specifically named, it is intended to and shall be understood as including all subsidiary, owned, controlled, leased, or operated lines." In its report in this case, the Commission explains further on this point: "Both the applicant and the T. & F. S. were assigned to system 15, Union Pacific, in our decision in *Consolidation of Railroads*, 159 I.C.C. 522. The properties of nonoperating corporations were not specifically assigned in that decision, it being assumed that they would follow the allocation of the operating companies. As to the applicant, the T. & F. S., and the nonoperating Kansas City, Shreveport & Gulf, the proposed lease is therefore in harmony with our general plan." See *Texarkana & Fort Smith Ry. Control*, 193 I.C.C. 521, 525. (R. 25.)

which would be effected in the event the abandonment were made. The protestants, appellants herein, have not brought before either the court below or this Court a record of any of the evidence introduced before the Commission. They offered no countervailing testimony (R. 24). The Commission found that the proposed lease permitting the removal of the offices would result in an annual saving of $81,626.08 [8] (R. 25). In view of the fact that the total main-line mileage of the Kansas City Southern system is but 883.2 miles, it is obvious that the maintenance of separate organizations for the handling of the business of less than 100 miles is "unjustifiably expensive and burdensome." (R. 23–24.) The Commission found that

> In view of the volume of interstate traffic handled by the T. & F. S., and the net income earned by that carrier, it is clear that the expenditure of approximately $81,000 a year, which will be unnecessary under the plan that the applicant proposes to put into effect under the lease, constitutes an undue burden upon interstate commerce.

[8] This estimate is based upon the personnel and rates of pay which existed in December, 1930, and which were lower than the peak figures of previous years but higher than the present figures which reflect the current depression. It is made up of the following items: Removal of auditor's and treasurer's department from Texarkana to Kansas City, $57,330; removal to Shreveport of offices of general freight agent, general passenger agent, superintendent, and division engineer, and of the master mechanic at Port Arthur, $21,678; the remainder to be derived from elimination of miscellaneous expenses for the upkeep of the Texarkana offices. 193 I.C.C. 521, 523. (R. 23.)

See 193 I.C.C. 521, 524–525 (R. 25).
Finally, it concluded (R. 25) that

> Upon further consideration of the record, and in the light of the argument thereon and the hearing on the supplement to the application, we find that the lease by the Kansas City Southern Railway Company of the railroad and properties of the Texarkana & Fort Smith Railway Company, located in Texas and elsewhere not now under lease, in accordance with the proposed lease, *will be in harmony with and in furtherance of the plan for the consolidation of railroad properties heretofore established by us and will promote the public interest.* (Italics supplied.)

As stated above, the appellants do not question these findings of the Commission. Indeed, according to the opinion of the court below (R. 53) they specifically disavow any contention that the application for approval of the acquisition by the Southern Company of the properties of the Texarkana Company was not duly presented and heard by the Commission so as to comply with all requirements of the applicable statute and due process of law. They even admit

> * * * that the Commission made a finding, fully supported by the evidence, to the effect that the continued maintenance at Texarkana of the facilities and agencies here involved would impose an annual and unnecessary burden on interstate commerce in the amount of $81,000. (R. 53.)

As pointed out above, the evidence upon which the Commission made the above findings is not before the Court. Under such circumstances this Court has held that the Commission's findings, which in this instance would include, of course, its finding that the expenditure of $81,000 a year constituted an undue burden upon interstate commerce, must be accepted as conclusive. *United States* v. *Tennessee*, 262 U.S. 318, 323–324; *Spiller* v. *Atchison, T. & S. F. Ry. Co.*, 253 U.S. 117, 125; and *Louisiana & Pine Bluff Ry. Co.* v. *United States*, 257 U.S. 114. In the case last mentioned, at p. 116, the Court said:

> No claim is made that there was lack of notice or of opportunity to be heard before the Commission or that the proceedings before it were otherwise irregular. Nor could a claim that the order was unsupported by evidence be insisted upon. For only a part of the evidence taken before the Commission was introduced.

III

BOTH BY GENERAL OPERATION AND SPECIFIC PROVISION, THE ORDER OF THE COMMISSION IS VALID AND OPERATIVE, NOTWITHSTANDING STATE LAWS

Before taking up the discussion of this point, it is well to examine the precise objections made by appellants before this Court. As has been indicated, appellants do not now question the power of Congress to deal with the subject of authorizing the carriers to abandon the general offices and shops at Texarkana. Nor do they deny that Congress may delegate such power to the Commission. No constitutional

question, therefore, is raised. Appellants contend, however, that no clearly defined delegation of such power has been made, and that, this being true, the order of the Commission authorizing the removal of the offices should not be permitted to stand because it would render ineffective the laws of the State of Texas in conflict therewith. With reference to their latter contention, it is obvious that the order does not, of its own force, purport to affect the operation of the State laws. The order does not require the removal of the offices or shops, but merely approves the lease, which, in turn, permits but does not require such removal. A decision by this Court, therefore, dismissing the bill to enjoin the order, would not be a declaration that any of the laws of the State of Texas are invalid, but would constitute simply a ruling that the Commission is not to be precluded from issuing the order because of the existence of such laws.

Operation of the Act in general: It will presently be shown that Congress, by express provision, has declared that orders of the Commission, issued under the authority of Section 5, Paragraphs 2 to 4, inclusive, of the Act, such as was the order in question, are not to be restrained or prohibited by the provisions of other laws, either State or Federal. It is our contention meanwhile that, *even in the absence of such specific provision*, the order of the Commission, in view of the purpose of Congress as revealed in the general language of the Federal legislation, would be operative, notwithstanding State statutes.

It is well established that federal authority, including that exercised through an administrative tribunal such as the Interstate Commerce Commission, cannot be affected, changed, or limited by the operation of State statutes.[9] Thus, in *Cleveland etc. Ry. Co.* v. *United States*, 275 U.S. 404, the Interstate Commerce Commission, acting under a statute authorizing it to require the construction of switch connections with private sidetracks only, had made an order requiring a railroad company to make switch connections with the siding or spur of a coal company in Illinois. A statute of that State, as construed by the State courts, provided that sidetracks of the character there involved were subject to public use. Since the State law made the track a "public" track, it was contended that the Interstate Commerce Commission erred in not proceeding in the matter as though a public track were involved. In sustaining the order of the Commission, this Court said (p. 410)—

> obviously, a State cannot, in respect to the regulation of interstate commerce, override the will of Congress.

And (p. 412)—

> obviously, neither the legislature nor the courts of a State can limit the power of the Inter-

[9] Similarly, private contracts must give way to orders of the Commission. *See Los Angeles Switching Case*, 234 U.S. 294, 312; *Louisville & Nashville R.R. Co.* v. *Mottley*, 219 U.S. 467; *Chicago, Indianapolis & Louisville Ry. Co.* v. *United States*, 219 U.S. 486; *Armour Packing Company* v. *United States*, 209 U.S. 56, 81; *New Haven R.R. Co.* v. *Interstate Commerce Commission*, 200 U.S. 361; and *Chicago & Alton R.R. Co.* v. *Kirby*, 225 U.S. 155.

state Commerce Commission to compel connections with private side tracks.

Cf. *Claiborne-Annapolis Ferry Co.* v. *United States*, 285 U.S. 382, 391, and *Missouri Railroad Co.* v. *United States*, 4 F. Supp. 449. To make more than passing reference to other recent decisions of the Court, such as *Colorado* v. *United States*, 271 U.S. 153, 162, *et seq.*; *Transit Commission* v. *United States*, 284 U.S. 360, 368; *New York Central Securities Corporation* v. *United States*, 287 U.S. 12, 26–27; and *Transit Commission* v. *United States*, 289 U.S. 121, 127–128, would labor the point beyond the range of necessity and reason.

To interpret the language, consequently, of the Transportation Act of 1920, and especially of the Emergency Railroad Transportation Act, 1933, as not authorizing the issuance of this particular order, because of the laws of the State of Texas, would result in an unreasonable delimitation and diminution of the great purposes of those Federal statutes.

Specific Authority: However, it is unnecessary to rely on the general effect of the Interstate Commerce Act, because Section 5 (15) of the Interstate Commerce Act in its present form makes the order of the Commission operative notwithstanding State or other Federal laws. Under its terms:

> The carriers and any corporation affected by any order made under the foregoing provisions of this section shall be, and they are hereby, relieved from the operation of the antitrust laws as designated in section 1 of the

> Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, and of *all other restraints and prohibitions by or imposed under authority of law, State or Federal, insofar as may be necessary to enable them to do anything authorized or required by such order.* (Italics supplied.)

It is difficult to understand the contention of appellants that there is any ambiguity in this legislative language. As has been shown, in discussing the preceding portions of the same section, the Commission is empowered to approve the acquisition of properties of one railroad by another through a lease of those properties, and to pass upon, approve, or reject the terms and conditions of the lease. When, in a given instance, the Commission has made an order approving acquisition by lease, the carriers affected are "by the very words of the statute", as the court below observes, "relieved from the operation of any state law to the restraint or prohibition of which otherwise they would be subjected, if such relief be necessary to the doing of anything which the order authorizes." (R. 55.) That this is the plain meaning of the statute would not seem to require more extended argument.

Appellants contend, however, that the language of Section 5(15) is open to interpretation, and that the words "all restraints or prohibitions" were not intended to take their literal meaning, construed independently of the preceding context; that, by

operation of the rule or doctrine of *ejusdem generis*, only such *restraints* or *prohibitions* as are of an anti-trust character were intended. The inapplicability of this rule of statutory construction to this case has been forcibly demonstrated in the opinion of the court below, in the following manner:

(1) The rule of *ejusdem generis* is a rule of construction only "to be used as an aid in the ascertainment of the intention of the lawmakers, and not for the purpose of subverting such intention when ascertained." *Mid-Northern Co.* v. *Montana*, 268 U.S. 45, 49. It is apparent, from a consideration of the whole Act of which paragraph (15) is a part, that the intention of Congress was to make possible the consolidation of railroad properties for the primary purpose of reducing the cost of railroad operation by removing wastes from which in turn the public would profit through rate reductions and the more efficient service thereby made possible. *New York Central Securities Corporation* v. *United States*, 287 U.S. 12, 25, 26. It cannot be assumed that Congress did not intend, at the same time, "to remove all obstacles to the accomplishment of the purpose for which the Act was passed." (R. 57.)

(2) The rule is that where in a statute general words follow the enumeration of particular classes the general words will be construed as applicable only to things of the same general nature as those enumerated. The particular words of paragraph (15) are

> * * * the antitrust laws as designated in section 1 of the Act entitled "An Act to sup-

plement existing laws against unlawful restraints and monopolies and for other purposes", approved October 15, 1914.

But those are *all* [10] of the antitrust laws of the United States. The particular words, therefore, embrace *all* objects of their class. Application of the rule then

[10] Section 1 of the Act approved October 15, 1914 (the Clayton Act), referred in the paragraph (15) under examination, provides: *Be it enacted* * * *, That "antitrust laws", as used herein, include the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July second, eighteen hundred and ninety; sections seventy-three to seventy-seven, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", of August twenty-seventh, eighteen hundred and ninety-four; and Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes'", approved February twelfth, nineteen hundred and thirteen, and also this Act.

These are truly *all* of the antitrust laws of the United States in the sense of designating the basic antitrust laws. There have been other statutes enacted subsequent to the Clayton Act of 1914 which deal with the subject of antitrust legislation, such as the Shipping Act of 1916, the Antidumping provision of the Revenue Act of 1916, the Webb Export Trade Act of 1918, the Capper-Volstead Act of 1922, the Packers and Stockyards Act of 1921, the Grain Futures Act of 1922, the Cooperative Marketing Act of 1926, and the antitrust provisions of the Radio Act of 1927. None of these statutes, however, falls within the strict meaning of the term "antitrust laws"; they provide merely for either exemptions from the operation of the antitrust laws as designated in Section 1 of the Clayton Act, or for supplementing administration and enforcement of the laws described in that section, and do not impose "other restraints or prohibitions" within the meaning of ~~that~~ section. 5 (5) under discussion.

would make meaningless the language, "all other restraints or prohibitions by or imposed under the authority of law, State or Federal." Where such a result obtains the rule does not apply. *Mason* v. *United States*, 260 U.S. 545, 553-554, and see Lewis' *Sutherland on Statutory Construction*, Vol. II, sec. 437 *et seq.*

(3) Finally, and relying on the principle that where the same word or phrase is used in different parts of a statute, it will be presumed to be used in the same sense throughout [11] the connotation of the "restraints" or "prohibitions" used in the paragraph here in question (which is contained in Title II, Section 202, of the Emergency Railroad Transportation Act, 1933) is to be given the same meaning as that which clearly is intended by similar words in Title I, Sections 10 (a) and 11, of the same statute. There,[12] it could not be contended that "restraints"

[11] *Pampanga Mills* v. *Trinidad*, 279 U.S. 211, 218.

[12] "SEC. 10. (a) The carriers or subsidiaries subject to the Interstate Commerce Act, as amended, affected by any order of the Coordinator or Commission made pursuant to this title shall, so long as such order is in effect, be, and they are hereby, relieved from the operation of the antitrust laws, as designated in section 1 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, and of all other restraints or prohibitions by law, State, or Federal, *other than such as are for the protection of the public health or safety*, insofar as may be necessary to enable them to do anything authorized or required by such order made pursuant to this title: *Provided, however*, That nothing herein shall be construed to repeal, amend, suspend, or modify any of the requirements of the Railway Labor Act or the duties and obligations imposed thereunder or through con-

or "prohibitions" of only an antitrust character are intended, for otherwise the express exceptions of restraints "for the protection of the public health or safety", or those arising from "contractual obligations with regard to the location or maintenance of offices, shops, or roundhouses at any point" would be rendered wholly unnecessary and meaningless.

Legislative History: Investigation of the history of the legislation removes all doubt as to the intention of Congress in its enactment. The report of Senate Hearings on the Emergency Railroad Transportation Act, 1933, S. 1580 at p. 87, for example, reveals that Mr. Donald R. Richberg, representing the Railway Labor Executives' Association, suggested an amendment to Section 10 of Title I (which, as has been seen, *supra* p. 35, contains language substantially identical with that of Paragraph (15) now under examination), so as to insert after the words "restraints or prohibitions by or imposed under authority of law, State or Federal" the following new matter:

> "against the consolidation or joint operation of railroad properties, or requiring competitive operations."

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tracts entered into in accordance with the provisions of said Act." (C. 91, Title I, Sec. 10 (a), 48 Stat. 215, U.S.C. Sup. VII, Title 49, Sec. 260 (a).) (Italics supplied.)

* * * * *

"SEC. 11. Nothing in this title shall be construed to relieve any carrier from *any contractual obligation which it may have assumed*, prior to the enactment of this Act, *with regard to the location or maintenance of offices, shops, or roundhouses at any point.*" (C. 91, Title I, Sec. 11, 48 Stat. 215, U.S.C. Sup. VII, Title 49, Sec. 261.) (Italics supplied.)

At p. 125 of the hearings Mr. Richberg explained the purpose of this amendment as follows:

> The amendment to section 10 which is next offered for the purpose of limiting the powers of the committee and the coordinator to set aside the law. It seems to us that such a limitation is clearly essential. The broad sweep of the present law is really astounding.

See also, pp. 127, 128, as follows:

> The CHAIRMAN. What you do is to limit the particular State and Federal laws to naming them; that is, you name the things which are mentioned in the State or Federal laws which may be overridden?
>
> Mr. RICHBERG. Precisely.
>
> This is our proposed section 10. I believe that is a perfectly sound proposition because, if Congress permits them to set aside the laws, the laws ought to be identified and named rather than a blanket provision to set them aside.

The failure of Congress to adopt the suggestion of Mr. Richberg clearly evidences an intention by Congress that *all* State and other Federal laws should yield to the administration of this statute.

Indeed, the record of the Congressional proceedings goes further. Not merely was it deemed necessary to supersede the operation of certain State laws, but of State constitutions also. Senator Cummins, Chairman of the Senate Committee on Interstate Commerce and co-author of the Transportation Act of 1920, answering an inquiry in the Senate as to the

reason for omitting any reference to State constitutions also, replied:

> Mr. CUMMINS. I feel very much obliged to the Senator from Colorado for calling to my attention a palpable omission in the bill, because *it is the intention of the committee to carry forward this process of consolidation as a power under the Constitution of the United States and without regard to either a State law or a State constitution*, always with the limitation that if a State road desires to do business of a purely State character, then we have no jurisdiction over it at all, either to regulate its rates or to compel its consolidation. (Italics supplied.)

59 Congressional Record 134, 135. See also, in the same volume, pp. 3349, 8851, 8852.

It would seem uncontrovertible, therefore, in view of the purpose of Congress, the general and specific provisions of the recent amendments to the Interstate Commerce Act, the judicial expressions interpreting such provisions, and the legislative history, that the Commission has authority to issue the order in question, notwithstanding the statutes of the State of Texas requiring the maintenance of general offices and the residence of general officers in that State.

One further consideration presents itself which we deem it our duty to call to the attention of the Court—whether the appellants have chosen the proper form of proceeding in which to assert the applicability of the State statutes. The language of

the Court in *New York Central Securities Corporation* v. *United States*, 287 U.S. 12, would seem to indicate that this is not the proper form of proceeding in which to make that assertion. In that case, the Commission issued an order, similar to the order in the case now before the Court, authorizing the New York Central Railroad Company to acquire control by lease (control by purchase of stock having already been obtained) of the railroad systems of the "Big Four" and the Michigan Central Railway companies. The plaintiff, a minority stockholder in each of the railway companies referred to, brought suit to set aside the order of the Commission, contending that the proposed acquisition of control by lease was in violation of State statutes forbidding, *inter alia*, carriers to lease competing lines. The Court, at pp. 26–27, said:

> Appellant contends that the provision of subdivision (8) of Sec. 5,[13] referring to "restraints of prohibitions by law, State or Federal" should be construed as limited to those restrictions which are of the same general character as the "antitrust laws" and not as applying to specific limitations imposed by state laws upon corporate powers with respect to the making of leases. Appellant invokes the laws of the States of incorporation in relation to leases of competing lines, and especially the laws of Ohio upon that subject and with

[13] Sec. 5 (8) of the Interstate Commerce Act, as amended by the Transportation Act of 1920, which is referred to at this point, is the same as Sec. 5 (15) of the Act, as now amended.

> respect to minimum rentals and security for payment and the preservation of property. It is sufficient for the present purpose to say that this contention cannot, in any event, avail the appellant. The question of the right of a State of incorporation, in a *direct proceeding*, to challenge the leases as *ultra vires*, is not before us. See *Cleveland, Cincinnati, Chicago & St. Louis Ry. Co.* v. *United States*, 275 U.S. 404, 414. The order of the Commission under Sec. 5 (2) is permissive, not mandatory. There is no warrant for concluding that the Congress intended to fetter the exercise of the Commission's authority by requiring that the Commission before making its order must determine whether the acquisition is within the corporate powers of the carrier under state laws. *The Commission has given its approval in the exercise of the authority conferred and the question of corporate powers cannot properly be raised in this suit to set aside the Commission's order. Cleveland, Cincinnati, Chicago & St. Louis Ry. Co., supra; Claiborne-Annapolis Ferry Co.* v. *United States*, 285 U.S. 382, 391. (Italics supplied.)

As the Court indicates, the right of private persons to invoke the operation of State laws to defeat the enforcement of an order of the Commission has been frequently denied. The Court, in *Cleveland, etc. Ry. Co. supra*, said:

> If the State concludes to question the legality of the shipper's acts, it must do so in a *direct proceeding* instituted by it for that purpose.

Kerfoot v. *Farmers & Merchants Bank*, 218 U.S. 281, 287. (Italics supplied.)

In none of these cases was a State the party plaintiff, so that it was not necessary for the Court further to define the manner in which a State might interpose the authority of its laws to that of an order of the Commission, other than to characterize the mode of attack as a *direct proceeding*. The apparent import of the language used by the Court when applied to the case now before it would seem to relegate the appellants herein to an action of *quo warranto* or similar proceeding in the courts of Texas against the railroad companies in the event the companies should proceed, in contravention of the State laws, to abandon or to remove from the State the general offices and shops.

CONCLUSION

In view of:

(a) the undeniable policy of Congress to conserve the revenues of the carriers and to eliminate unnecessary expenditures,

(b) the uncontradicted findings of the Commission, especially the finding that the maintenance of the general offices and shops at Texarkana constitutes a waste and an undue burden on interstate commerce, and

(c) the general and specific authority conferred upon the Commission to approve the proposed lease permitting the abandonment or removal from the State of Texas of such offices and shops, notwithstanding State statutes to the contrary,

it is respectfully submitted that the decree of the court below dismissing the bill of complaint should be affirmed.

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MAY, 1934.

APPENDIX

I. FEDERAL STATUTES

Section 5 of the Interstate Commerce Act, as amended by the Emergency Railroad Transportation Act, 1933, provides in part:

> (2) The Commission shall as soon as practicable prepare and adopt a plan for the consolidation of the railway properties of the continental United States into a limited number of systems. In the division of such railways into such systems under such plan, competition shall be preserved as fully as possible and wherever practicable the existing routes and channels of trade and commerce shall be maintained. Subject to the foregoing requirements, the several systems shall be so arranged that the cost of transportation as between competitive systems and as related to the values of the properties through which the service is rendered shall be the same, so far as practicable, so that these systems can employ uniform rates in the movement of competitive traffic and under efficient management earn substantially the same rate of return upon the value of their respective railway properties.
>
> (C. 91, Sec. 407, 41 Stat. 481, U.S.C., Sup. VII, Title 49, Sec. 5 (2).)
>
> (3) When the Commission has agreed upon a tentative plan, it shall give the same due publicity and upon reasonable notice, including notice to the Governor of each State, shall hear all persons who may file or present objections thereto. The Commission is authorized

to prescribe a procedure for such hearings and to fix a time for bringing them to a close. After the hearings are at an end, the Commission shall adopt a plan for such consolidation and publish the same; but it may at any time thereafter, upon its own motion or upon application, reopen the subject for such changes or modifications as in its judgment will promote the public interest.

(C. 91, Sec. 407, 41 Stat. 481, U.S.C., Sup. VII, Title 49, Sec. 5 (3).)

(4) (a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b), for two or more carriers to consolidate or merge their properties, or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership; or for any carrier, or two or more carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another; or for any carrier, or two or more carriers jointly, to acquire control of another through purchase of its stock; or for a corporation which is not a carrier to acquire control of two or more carriers through ownership of their stock; or for a corporation which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock.

(b) Whenever a consolidation, merger, purchase, lease, operating contract, or acquisition of control is proposed under subdivision (a), the carrier or carriers or corporation seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants, of the time and place

for a public hearing. If after such hearing the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed consolidation, merger, purchase, lease, operating contract, or acquisition of control will be in harmony with and in furtherance of the plan for the consolidation of railway properties established pursuant to paragraph (3), and will promote the public interest, it may enter an order approving and authorizing such consolidation, merger, purchase, lease, operating contract, or acquisition of control, upon the terms and conditions and with the modifications so found to be just and reasonable.

(C. 91, Sec. 202, 48 Stat. 217, U.S.C., Sup. VII, Title 49, Sec. 5 (4).)

(15) The carriers and any corporation affected by any order made under the foregoing provisions of this section shall be, and they are hereby, relieved from the operation of the antitrust laws as designated in section 1 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, and of all other restraints or prohibitions by or imposed under authority of law, State or Federal, insofar as may be necessary to enable them to do anything authorized or required by such order.

(C. 91, Sec. 202, 48 Stat. 219 U.S.C., Sup. VII, Title 49, Sec. 5 (15).)

II. STATUTES OF THE STATE OF TEXAS

The following statutory provisions of the 1925 Revised Civil Statutes of the State of Texas, which are involved herein, are as follows:

ART. 6260. (6406) *Who may build.*—No corporation, except one chartered under the laws

of Texas, shall be authorized or permitted to construct, build, operate, acquire, own or maintain any railways within State.

(Acts 1903, p. 90.)

ART. 6275. (6423) (4367) *To keep offices in Texas.*—Every railroad company chartered by this State, or owning or operating any line of railway within this State, shall keep and maintain permanently its general offices within this State at the place named in its charter for the location of its general offices. If no certain place is named in its charter where its general offices shall be located and maintained, then said railroad company shall keep and maintain its general offices at such place within this State where it contracts or agrees to locate its general office for a valuable consideration.

(Acts 1889, p. 130; G.L. Vol. 9, p. 1158.)

ART. 6278. (6424) (4368) *Officers to keep offices in Texas.*—Railroad companies shall keep and maintain at the place within this State where its general offices are located the office of its president, or vice-president, secretary, treasurer, local treasurer, auditor, general freight agent, traffic manager, general manager, general superintendent, general passenger and ticket agent, chief engineer, superintendent of motive power and machinery, master mechanic, master of transportation, fuel agent, general claim agent; and each one of its general offices shall be so kept and maintained by whatever name it is known, and the persons who perform the duties of said general offices, by whatever name known, shall keep and maintain their offices at the place where said general offices are required to be located and maintained; and the persons holding said general offices shall reside at the place and keep and maintain their offices at the place where said general offices are required by law to be kept and maintained. If the duties of any of the above named offices

are performed by any person, but his position is called by a different name, said railroad company shall maintain said offices at the place where its general Texas offices are kept and maintained, as required by this chapter. The name of the general offices shall not be understood to allow the railroad company to have any of the offices usually known as general offices at any other place than the one at which it is required to keep its general offices; and each railroad is hereby required to have and maintain its general offices at the place named herein. Where the principal shops of a company are situated on its line in the State, at a place other than where its general offices are located, the superintendent of motive power and machinery, master mechanic, either or both, may have his office and residence at such place where such principal shops are located; provided, that the Railroad Commission of Texas, where it is made to appear that any officer, other than the general officers of any company, can more conveniently perform his duties by residing at some place on the line in Texas other than the place where the general offices are situated, may by an order entered on its record, authorize any such officer to so reside and keep his office at such place.

(Id. Acts 1899, p. 177.)

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